



North America Europe Asia

200 Park Avenue
New York, NY 10166
T +1 212 294 6700
F +1 212 294 4700

JEFFREY L. KESSLER
(212) 294-4698
jkessler@winston.com

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VIA ECF

Honorable Richard J. Sullivan
United States District Judge
United States District Court, Southern District of New York
40 Foley Square, Courtroom 905
New York, NY 10007

Re: ***Johnson v. National Football League Players Association, et al.***, Case No. 1:17-cv-05131-RJS

Dear Judge Sullivan:

On behalf of the National Football League Players Association (“NFLPA”), and pursuant to Local Rule 7.1(d), we write to address the time for the NFLPA to file an Answer to Mr. Johnson’s First Amended Complaint (ECF No. 39) (“FAC”).

The NFLPA answered Johnson’s original complaint on February 1, 2017. *See* ECF No. 28. Johnson thereafter filed an amended complaint “[t]o remove any doubt that his claims are properly before this Court [in Ohio].” *See* Pl.’s Mem. in Opp. to Def. NFLPA’s Mot. to Dismiss, ECF No. 43, at 7.¹ The NFLPA did not answer the amended allegations but instead filed a motion to dismiss that was recently granted in part and denied in part. *See* Memorandum and Order, ECF No. 125 (“Dismissal Order”). Discovery in the case has been stayed. *See* Aug. 24, 2017, Hr’g Tr. at 33:1-17, 46:20-47:4, ECF No. 99.

In its Dismissal Order, the Court instructed the parties to “submit a joint letter to the Court no later than Thursday, October 18, 2018 regarding proposed next steps with respect to Plaintiff’s remaining LMRDA claim and Plaintiff’s unanswered claims against the NFLMC.” Dismissal Order at 21. In Plaintiff’s portion of that submission, Johnson asked the Court to issue a scheduling order and to “address the NFLPA’s answer to his [FAC].” Joint Submission (Oct. 18, 2018), ECF No. 126, at 1. But, as discussed in that submission, the NFLPA believes that its October 16 production renders Plaintiff’s LMRDA claim moot. *Id.* at 4-5.

With respect to the time to file an answer to the FAC, the NFLPA respectfully requests that it be permitted to file its answer seven (7) days after any denial of its intended summary judgment motion (*see id.*) or any other judicial determination that Johnson’s LMRDA claim is not moot. Prior to the NFLPA making this submission, Johnson’s counsel informed the NFLPA that he

¹ The Northern District of Ohio nonetheless transferred Johnson’s case to this District. *See* ECF No. 68.

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believes an answer to the FAC is past due under Federal Rule of Civil Procedure 12(a)(4)(A).² The NFLPA disagrees with Johnson's position based both on the Dismissal Order and the fact that Johnson's claim was mooted on October 16 (*supra*), but, in any event, the Court would have wide discretion under Federal Rule of Civil Procedure 6(b) to alter the time to answer when, as here, the delay would not be long and there is no prejudice to Johnson. *See, e.g., LoSacco v. City of Middletown*, 71 F.3d 88, 93 (2d Cir. 1995); *Lee v. ITT Standard*, 268 F. Supp. 2d 315, 329–30 (W.D.N.Y. 2002), *report and recommendation adopted in part sub nom. Estate of Lee v. ITT Standard*, 268 F. Supp. 2d 356 (W.D.N.Y. 2003). Indeed, the LMRDA-related allegations in the FAC are substantively no different than the LMRDA-related allegations in the original Complaint that the NFLPA answered in February 2017. *See* ECF No. 28.

For the foregoing reasons, the NFLPA asks the Court to set a deadline for filing an answer to the FAC seven days following any determination that Johnson's LMRDA claim is not moot.

Respectfully submitted,

/s/ Jeffrey L. Kessler

Jeffrey L. Kessler

² Presumably, Johnson's position is that the NFLPA should have filed an answer to the FAC fourteen (14) days after receiving notice of the Dismissal Order.